

LESSONS LEARNED

June 1, 1998, Issue No. 15

For Second Quarter FY 1998

NEPA Compliance Officers Meet in DC

How can NEPA Compliance Officers (NCOs) become more effective? What can the Offices of Environment, Safety and Health (EH) and General Counsel (GC) do to better support the NCOs? Field and Program NCOs and staff of the Offices of NEPA Policy and Assistance and the Assistant General Counsel for Environment met in Washington, DC, on March 26 and 27 to explore these questions.

Peter Brush, Acting Assistant Secretary for Environment, Safety and Health, saluted the NCOs as key participants in DOE's NEPA Program. "NEPA is no longer a military campaign to be imposed on the Department; it has become a way of life," he said. Referring primarily to the NCOs' role in recommending approval of environmental assessments (EAs) to Secretarial Officers and Heads of Field Organizations, he continued, "We rely on the NCOs to perform functions that we formerly carried out at higher levels of the Department. You have become a major force in streamlining our NEPA compliance."

Mr. Brush emphasized that to be effective, NCOs must have authority and information. "Use it or lose it," he

"NEPA . . . has become a way of life."

challenged them. In response to an NCO's question as to whether DOE top managers support NEPA, Mr. Brush responded that the Secretary is a "true believer" and that the Assistant Secretaries are deeply analytical decision makers who appreciate the value of systematic environmental review during the decision process.

The articles that follow highlight the major discussion topics at the NCO meeting. An NCO panel shared ways to provide NEPA advice to their managers, project officials, and NEPA document preparers. NCOs, EH, and GC discussed how to efficiently and effectively record categorical exclusions. NCOs identified NEPA training

needs for their Offices and spoke of the value of the *Lessons Learned Quarterly Report* in Department-wide NEPA coordination. NCOs with tasks under the DOE-wide NEPA support contracts expressed satisfaction that the expected benefits (reduced time and cost) are materializing. A panel told of experiences integrating NEPA with other environmental reviews and consultations—under the Endangered Species Act, the National Historic Preservation Act, and state environmental policy acts, for example. GC emphasized the importance of preparing an adequate administrative record to document the NEPA process.

The NCOs and the Office of NEPA Policy and Assistance will continue to seek ways to improve the DOE NEPA Program. They are planning a wider DOE NEPA Community Meeting to be held at the Nevada Operations Office during the week of October 13, 1998. **L**

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Peter Brush, Acting Assistant Secretary for Environment, Safety and Health, presents opening remarks at the March meeting of the DOE NEPA Compliance Officers

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Carol Borgstrom

Director
Office of NEPA Policy and Assistance

Correction

The article entitled "Early NEPA Saves Resources for the Agricultural Research Service" in the March 2, 1998, issue of the *Lessons Learned Quarterly Report*, failed to credit two of the authors. The article should have been attributed to John Crew, Agricultural Research Service, and Murray Wade, Jim Van Dyke, and Sam Carnes, Energy Division, Oak Ridge National Laboratory. *Lessons Learned* regrets the error.

Be Part of Lessons Learned

We Welcome Contributions

We welcome your contributions to the *Lessons Learned Quarterly Report*. Please contact Yardena Mansoor at yardena.mansoor@eh.doe.gov, phone (202) 586-9326, or fax (202) 586-7031. Draft articles for the next issue are requested by July 31, 1998.

Third Quarter Questionnaires Due July 31

Lessons Learned Questionnaires for NEPA documents completed during the third quarter of fiscal year 1998 (April 1 through June 30) should be submitted as soon as possible after document completion, but no later than July 31, 1998. The Lessons Learned Questionnaire is available interactively on the DOE NEPA Web at <http://tis.eh.doe.gov/nepa/> under DOE NEPA Process Information.

For Lessons Learned Questionnaire issues, contact Hitesh Nigam at hitesh.nigam@eh.doe.gov, phone (202) 586-0750, or fax (202) 586-7031.

Feedback on LLQR

Do you have a comment or a suggestion? Please submit feedback on the *Lessons Learned Quarterly Report* to: Hitesh Nigam, hitesh.nigam@eh.doe.gov, phone (202) 586-0750, or fax (202) 586-7031.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA Web at <http://tis.eh.doe.gov/nepa/> under DOE NEPA Process Information.

LLQR Index

A cumulative index of the LLQR is provided in the September issue each year.

The Role of the NCO

It's a Tough Job, But . . .

Following Mr. Brush's comments challenging NCOs to use their authority to become more effective advocates for environment, safety, and health within their organizations, a diverse panel of six Headquarters and Field NCOs discussed potential barriers to needed improvements in NCO effectiveness. In introducing the panel, moderator Eric Cohen noted that the Office of NEPA Policy and Assistance has met with NCOs several times to explore ways to strengthen the role of the NCO, and he encouraged panel members to frankly discuss any empowerment issues that may limit their ability to do their jobs. Specifically, panel members were asked to explore their relationships with management and program officials, project managers, NEPA document managers, and legal counsel. Following are highlights of the discussion.

Chicago: Bill White advised NCOs to work jointly with the Document Manager, Project Manager, legal staff, and public outreach staff early in the EA internal scoping process. The goal of such a group would be to cooperatively draft an EA outline, statement of purpose and need, proposed action and alternatives, and to identify potential environmental issues. This early effort helps EA preparation to proceed efficiently. The teamwork approach fosters partnership and lessens the likelihood of disagreements developing later in the EA process. Mr. White cautioned, however, that NCOs may find themselves in the middle of conflicts among the participants if open communications and a spirit of teamwork are not established early.

Energy Research: Clarence Hickey reported that communication and coordination are paramount. (See related article in *Lessons Learned Quarterly Report*, March 1998, page 10.) "Part of my job is to provide my best advice," he asserted, "and to be sure that my manager is informed, even when making a decision that differs from my recommendation." He believes that what helps the NCO to be effective is not just a hammer (the NCO authorities under the NEPA Order), but also influence based on trust. Mr. Hickey recommends that NCOs invest considerable effort in understanding the basic project technology of proposals undergoing NEPA

review in order to advise management and project personnel on the potential environmental issues affecting their activities.

Environmental Management (EM): Steve Frank described the EM NEPA program's emphasis on supporting and coordinating with the Field through education, communication, and enabling. Because of the large number of NEPA reviews that involve EM, he must select reviews in which to participate. Mr. Frank encouraged Field NCOs to share site tracking reports for NEPA activities with EM and EH. He also offered the EM



NCOs share perspectives on working effectively with managers, project personnel, legal staff, and NEPA Document Managers (left to right, facing forward: Clarence Hickey, Bill White, Elizabeth Withers, Debbie Turner, Steve Frank, and Lloyd Lorenzi)

Monthly Envirowatch bulletin (<http://www.em.doe.gov/em75/envwatch/>) as a resource to the environment, safety, and health community.

Federal Energy Technology Center: Lloyd Lorenzi reported on incorporating a discussion of NEPA responsibilities into the Center's functions and responsibilities manual. By this means he hopes to ensure that NEPA responsibilities are brought to the attention of project staff. Mr. Lorenzi also strives to ensure that NEPA compliance is not overlooked in project planning by requiring the NCO to sign project initiation documents to signify that "NEPA is complete."

Golden Field Office: Debbie Turner described the NCO role in an Office that works primarily with non-Federal proponents and sites. Her approach is to remind non-Federal Project Managers that appropriate NEPA activities can help them, and that NEPA is the way DOE does business, not a separate activity. To build support for the NEPA program through an understanding of its benefits, Ms. Turner has shifted the focus of training sessions from *how* to *why* to undertake NEPA compliance activities.

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Special Considerations in Applying Categorical Exclusions

The process of applying categorical exclusions for some classes of actions—such as routine maintenance or indoor bench-scale research—is not straightforward. On this, everyone at the NCO meeting could agree. But a variety of viewpoints emerged regarding the best way to address proposed actions in such categories, which may not be well-defined until shortly before they are to begin, and may occur in large numbers per year.

Stan Lichtman, Office of NEPA Policy and Assistance, framed the discussion of categorical exclusions. Mr. Lichtman emphasized that NCOs need practical approaches for determining the level of NEPA review for these types of proposed actions. To do so, NCOs need to be able to identify the extraordinary circumstances that would make proposed actions ineligible for categorical exclusion. He stated that the discussion need not be concerned about proposed actions that vary trivially from actions previously determined to be categorically excluded or for which the specific details could not possibly affect the appropriate level of NEPA review.

A panel of NCOs—Paul Dunigan, Richland Operations Office; Drew Grainger, Savannah River Operations Office; Roger Twitchell, Idaho Operations Office; and Elizabeth Withers, Los Alamos Area Office—described approaches that they use to apply categorical exclusions in their Offices. The panel members acknowledged that no single method of applying categorical exclusions is best for all circumstances.

The Office of the Assistant General Counsel for Environment reminded NCOs that they must consider the specific facts of an actual proposed action when applying a categorical exclusion. When proposed actions are

grouped for categorical exclusion application, the NCO should limit the duration and scope of the determination. Any categorical exclusion determination for an action that will continue into the future must be based on knowledge of the actual nature of the action.

The discussion was part of an ongoing focus on categorical exclusions that recently resulted in guidance on recordkeeping (Memorandum to Secretarial Officers and Heads of Field Organizations, signed by Peter Brush, January 16, 1998). (See related article in *Lessons Learned Quarterly Report*, September 1997, page 9.) At the end, it was clear that the “last word” on this subject had not yet been heard. Carol Borgstrom, Director of the Office of NEPA Policy and Assistance, promised to consult with other Federal agencies on their processes for categorical exclusion determinations. She advised that further guidance on categorical exclusion determinations will be completed in consultation with the NEPA Compliance Officers and the Office of General Counsel. 

Mark Your Calendar!

**Next DOE NEPA
Community Meeting**

**Nevada Operations Office
North Las Vegas, Nevada**

Week of October 13, 1998

Further information will be mailed shortly.

Role of the NCO (continued from page 3)

Los Alamos Area Office: Elizabeth Withers observed that litigation over the Dual Axis Radiographic Hydrodynamic Test Facility (related article in *Lessons Learned Quarterly Report*, December 1995, page 12) raised her Office’s awareness of the need for careful NEPA review for proposals that change in the course of development. Litigation concentrates the mind, she reported, though the Office would not care to repeat the experience.

The NCO panel suggested ways that EH can help strengthen their NEPA programs:

- Inform Headquarters NCOs of, if not actually involve them in, interactions between EH and Field Offices regarding NEPA activities.
- Provide more training to NEPA Document Managers.
- Provide preparers with feedback on EA quality.
- Provide more opportunities to recognize NEPA Offices excellence.
- Continue to support the *Lessons Learned Quarterly Report* as a tool for continuous improvement, guidance, and metrics tracking. 

NEPA Training Anticipated

Questionnaire Results Identify Needs

By: David Hoel
National Environmental Training Office
Savannah River Operations Office

Results continue to be evaluated in the training needs analysis conducted by the DOE National Environmental Training Office (NETO) in partnership with the Office of NEPA Policy and Assistance and the Office of Defense Programs. (See related article in *Lessons Learned Quarterly Report*, December 1997, page 10.) More than 60 percent of the 150 questionnaires sent to members of the DOE NEPA community were returned.

Preliminary analysis of questionnaire responses indicates that a substantial proportion of the NEPA community is in favor of DOE sponsoring Department-wide NEPA training for a wide range of NEPA topics. Topics of popular interest include: general overview of NEPA requirements, the DOE Order and Rule on NEPA, determining the appropriate level of NEPA review, and recent and emerging NEPA issues. Respondents also indicated an interest in training on NEPA litigation lessons learned, DOE Headquarters NEPA procedures, NEPA document project management, health effects analysis, endangered species impacts, environmental justice impacts, and preparing findings of no significant impact and records of decision.

Discussion of these results by NCOs supports a Department-wide need for NEPA training. NETO will complete a compilation of the survey results, produce a final report, and consult with the Office of NEPA Policy and Assistance to determine what Department-wide NEPA training to sponsor. For more information, see the NETO web page at <http://www.em.doe.gov/neto/> or phone (803) 725-0814. 

Is CD-ROM Technique in DOE's Future?

By: Gary Palmer
Deputy NEPA Compliance Officer
Defense Programs

The Defense Programs NCO Office is exploring the use of CD-ROM-based training for DOE and contractor staff involved in the NEPA process. To evaluate this educational technology for NEPA training, we have started a pilot program with the assistance of The Mangi Environmental Group. We have identified 31 modules that could make up a several-day, complete NEPA course and have chosen two to develop as pilot lessons. "DOE NEPA" will explain how the Department implements NEPA. "Getting Started on a NEPA Process" will present EIS, EA, and categorical exclusion requirements in a DOE context, setting the stage for further development of each level of NEPA review. We have reviewed outlines of one of these modules; completion of the text will allow computer technicians to produce the material to be placed on the CD-ROM. When these two modules are completed, they will be reviewed and tested for use by the target audience, NEPA Document Managers.

We discussed this developing training project at the recent March NCO Meeting. Several NCOs asked whether the technology could be extended to have the modules available on-line, through an Internet connection. It appears—at this point, anyway—that the technology would not support interactive training online.

We also distributed sample disks that demonstrate the technology to NCOs at the March meeting, and we intend to present the pilot modules at the next NEPA Community Meeting. We will continue to explore all aspects of this training capability and will report on the status in future issues of the *Lessons Learned Quarterly Report*. For additional information, contact Gary Palmer at gary.palmer@dp.doe.gov or (202) 586-1785. 

DOE-wide NEPA Contracts Provide Quick Access, Lower Costs

New Contractor Added

The Contracting Officer for the DOE-wide NEPA support contracts, Dawn Knepper, Albuquerque Operations Office, enthusiastically promoted continued and increased use of the contracts at the NCO meeting. She also announced a new contract award to Battelle Memorial Institute, which will help foster competition and avoid potential conflicts of interest now that one of the original three contract holders has acquired another. (See related article in *Lessons Learned Quarterly Report*, September 1997, page 10.)

Ms. Knepper advised NCOs to use competition in awarding tasks and to be sure to complete contractor performance evaluations after a task is completed. The Program Manager for each contractor team also briefly addressed the NCOs, summarizing the NEPA support capabilities of their respective companies and subcontractors.

Two NCOs who served on the source evaluation panel, Drew Grainger, Savannah River Operations Office, and Roger Twitchell, Idaho Operations Office, described their experiences using the DOE-wide contracts. They confirmed that task orders can be issued easily within two weeks, compared to months or even years to award a new contract. They have had success using detailed Statements of Work, several of which were provided as examples. One NCO observed that costs for one contractor are 20 percent lower under the DOE-wide NEPA contract than under a separate contract with the site.

The tasks listed below have been awarded since June 1997. For more information on the use of the DOE-wide NEPA contracts, contact Dawn Knepper at knepper@doeal.gov or (505) 845-6215. 

The Three DOE-wide NEPA Contractor Teams: An Update

- **Battelle Memorial Institute**
Program Manager: Lucinda Low Swartz
swartzl@battelle.org
phone (202) 646-7802, fax (202) 646-5233
- **Science Applications International Corporation (SAIC)**
Program Manager: Glen T. Hanson
glen.t.hanson@cpmx.saic.com
phone (505) 842-7858, fax (505) 842-7798
- **Tetra Tech (formerly Tetra Tech Incorporated and Halliburton NUS Corporation)**
Program Manager: Thomas Magette
magette@ttalex.com
phone (703) 931-9301, fax (703) 931-9222

Task Description	NEPA Document Manager	Award Date	Contractor Team
Los Alamos National Laboratory Site-wide EIS (document production and comment response)	Cory Cruz (AL) ccruz@doeal.gov ; phone (505) 845-4282	7/3/97	Tetra Tech, Incorporated
Sandia National Laboratories Site-wide EIS (draft and final EIS and public relations)	Julianne Levings (AL) jlevings@doeal.gov ; phone (505) 845-6201	8/15/97	Halliburton NUS Corporation
Commercial Light Water Reactor Tritium Extraction Facility EIS	John Knox (SR) john.knox@srs.gov ; phone (803) 725-5550	9/16/97	Halliburton NUS Corporation
Los Alamos Nonproliferation and International Security Center EA	Dean Triebel (LAAO) d.triebel@doe.lanl.gov ; phone (505) 665-6353	11/13/97	Tetra Tech, Incorporated
Advanced Mixed Waste Treatment Facility EIS (draft EIS and comment response)	John Medema (ID) medemaje@inel.gov ; phone (208) 526-0535	11/14/97	Tetra Tech, Incorporated
Hanford Remedial Action Program EIS (completion of EIS in progress)	Tom Ferns (RL) thomas_w_ferns@rl.gov ; phone (509) 372-0649	11/17/97	Halliburton NUS Corporation
High Level Waste and Facilities Disposition EIS	Tom Wichmann (ID) wichmatl@inel.gov ; phone (208) 526-0535	11/24/97	Halliburton NUS Corporation
Brookhaven High Flux Beam Reactor EIS	Nand Narain (BHG) narain@bnl.gov ; phone (516) 344-5435	12/17/97	Tetra Tech, Incorporated
Container System for the Naval Spent Nuclear Fuel Supplement Analysis	Ron Ramsey (ID) ramseyro@inel.gov ; phone (202) 526-1545	3/11/98	SAIC
Los Alamos National Laboratory Land Transfer EIS	Elizabeth Withers (LAAO) ewithers@doe.lanl.gov ; phone (505) 667-8690	4/10/98	Tetra Tech

Integrating NEPA with Other Environmental Reviews

The Council on Environmental Quality (CEQ) NEPA regulations require that, to the fullest extent possible, agencies shall prepare an EIS concurrently with and integrated with environmental impact analyses and related surveys and studies required under other statutes (40 CFR 1502.25). Furthermore, agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication (40 CFR 1506.2).

The reviews and consultations to be integrated with NEPA review include those undertaken in accordance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, and state environmental policy acts. Typically, reviews under these statutes are needed to completely assess the impacts of a proposed action.

Often the reviews are based on the same information and may be performed at the same time as a NEPA review, thereby gaining efficiencies. Integrating these reviews, however, poses many challenges, as a panel of NCOs and NEPA Document Managers discussed.

Advice from GC

In discussing the status of ongoing litigation and lessons learned, Anita Capoferri, Office of the Assistant General Counsel for Contractor Litigation, and Steve Ferguson and Janine Sweeney, Office of the Assistant General Counsel for Environment, urged NCOs to prepare administrative records that document opportunities for public participation and consideration of information adverse to the agency position. (See additional recommendations in the related article in *Lessons Learned Quarterly Report*, September 1997, page 7.) They also recommended using in EISs the model language on encountering unexpected materials during excavation (presented in the *Lessons Learned Quarterly Report*, March 1998, page 8).

Tony Como, Office of Fossil Energy, reported on the strategy of transferring a Section 7 Endangered Species Act permit, including mitigation requirements, to a private sector purchaser of the Naval Petroleum Reserve (related article in *Lessons Learned Quarterly Report*, December 1997, page 1). The NEPA review included alternatives that projected how the purchaser would likely develop and operate the property differently from development and operation under the constraints (including budgetary) of government activity.

Paul Dunigan, Richland Operations Office NCO, described DOE's experiences in preparing two major EISs jointly with the State of Washington to satisfy both NEPA and the state environmental policy act. Joint preparation with the State was highly efficient in satisfying all requirements.

Kathy Pierce, Document Manager for the Bonneville Power Administration, discussed the challenges of conducting public scoping for a proposed action involving multiple agencies with highly different scoping procedures. She described Bonneville's success in coordinating with the Fish and Wildlife Service and State Historic Preservation Office early enough to report on the consultation in the draft NEPA document.

Elizabeth Withers, Los Alamos Area Office NCO, discussed meeting regulatory requirements when most of a site is an environmentally sensitive resource because of the presence of endangered species or their critical habitat, archaeological sites, or other cultural resources. She reminded NCOs to be open to compromise in complicated environmental consultations with agencies whose perspectives and procedures differ from DOE's.

In group discussion, NCOs asked EH to provide more guidance on integrating NEPA and state environmental reviews. 

NRC Adopts DOE NEPA Documents for Spent Fuel at INEEL

By: Eric Cohen, Office of NEPA Policy and Assistance

In March 1998, the Nuclear Regulatory Commission (NRC) issued a Final EIS to support its decision on DOE's application for a license to construct and operate a dry storage facility at the Idaho National Engineering and Environmental Laboratory (INEEL) for Three Mile Island Unit 2 spent nuclear fuel debris. DOE NEPA practitioners involved with projects, that eventually may be regulated by NRC, may be interested in how NRC applied its EIS procedures and relied on DOE NEPA documents in this case.

DOE's Proposal and NEPA Review

DOE has been managing Three Mile Island Unit 2 spent fuel debris at INEEL at the Test Area North wet storage pool. In response to environment, safety, and health vulnerabilities that DOE identified associated with the storage pool, DOE is proposing to construct and operate a new dry storage facility at the Idaho Nuclear Technology and Engineering Center (formerly the Idaho Chemical Processing Plant) to store the spent fuel debris until the department disposes of the fuel. Because NRC regulates spent nuclear fuel from commercial power reactors such as those at Three Mile Island, DOE applied for an NRC license for the proposed new facility.

As part of the "environmental report" required under NRC license application procedures (10 CFR Part 72), DOE provided NRC with the following DOE NEPA documents that addressed the proposal, but in which NRC did not participate as a cooperating agency:

- A programmatic EIS: DOE/EIS-0203-F, *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement*, April 1995.
- An EA tiered from the programmatic EIS: DOE/EA-1050, *Environmental Assessment: Test Area North Pool Stabilization Project*, May 1996.
- A second EA tiered from the programmatic EIS to address changes in scope: DOE/EA-1217, *Environmental Assessment: Test Area North Pool Stabilization Project* (Update to DOE/EA-1050), August 1997.

How NRC Applied NEPA and Prepared its FEIS

NRC elected to adopt the DOE NEPA documents as its Final EIS and chose not to recirculate the documents, except as a final statement. As NRC stated in the Final EIS and the Notice of Availability (51 FR 13077, March 17, 1998), this process was allowable under NRC NEPA procedures (10 CFR Part 51, Appendix A to Subpart A) and Council on Environmental Quality NEPA regulations (40 CFR 1506.3). In choosing this approach to its NEPA review, NRC conducted an independent staff review of the DOE documents and determined that:

(1) the NRC proposed action of issuing a license is substantially the same as the actions considered in DOE's NEPA documents; (2) the DOE NEPA documents are current; and (3) NRC NEPA procedures were satisfied.

NRC prepared its Final EIS by excerpting text, figures, and tables from DOE's NEPA documents. The excerpted material was modified as necessary to fit NRC's format for EISs and to place it within the context of NRC's proposed action. As a rough estimate, about 80 to 90 percent of NRC's Final EIS consisted of excerpted DOE material. The remaining narrative primarily introduced the DOE material and contained very little new analysis.

For readers interested in more information or a copy of NRC's Final EIS, the complete title is: Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation to Store the Three Mile Island Unit 2 Spent Fuel at the Idaho National Engineering and Environmental Laboratory, (NUREG-1626) (Docket No. 72-20). The NRC contact for the FEIS is Dr. Edward Y. Shum, U.S. Nuclear Regulatory Commission, Washington, DC 20555, phone (301) 415-8545. 

Alternative Dispute Resolution: Common Ground with NEPA

By: Phoebe Hamill, *Office of Fossil Energy*

Many organizations, both public and private, are increasingly coming to appreciate the value of alternative dispute resolution (ADR) in structured decision making. ADR can help Federal agencies by building consensus and by reducing the likelihood of NEPA-related litigation. (See related article in *Lessons Learned Quarterly Report*, June 1996, page 7.)

Last February, I attended an excellent session on ADR at the American Bar Association's class on environmental law issues. The two ADR panelists were Peter R. Steenland, Department of Justice counsel for dispute resolution, and Gail Bingham, President of RESOLVE, Inc., a not-for-profit center for environmental dispute resolution based in Washington, DC.

The panelists identified environmental and natural resources conflicts as particularly challenging to resolve. Multiple parties are affected, and issues are complicated by scientific uncertainty. Parties often have unequal resources that they can commit to the process, and negotiations must be accountable to a wide range of public policy and legal requirements, including open meeting laws.

ADR Process

An ADR process for an environmental dispute is often initiated voluntarily, but it may also be mandated by the courts. Mediation is the favored process by both the government and the courts. Mediators are neutral problem-solvers, disassociated from any past grievances among the parties, with no stake in the outcome; they can help parties overcome barriers and engage in successful dialogue. Participants usually engage both in direct dialogue in joint sessions as well as in confidential discussions with the mediator who may conduct "shuttle diplomacy." Sometimes, when mediators float potential offers, an idea may receive a fairer hearing because the parties do not know whether it came from the mediator or from the (distrusted) adversary.

ADR experts point out that it is sometimes necessary to go beyond traditional public involvement procedures. An ADR process can supplement the NEPA process for information gathering, scoping, and the evaluation of alternatives. What ADR adds to NEPA public involvement is that parties collaborate—not just comment and

respond. ADR will work only when there is some agreement on underlying need; it will not be successful where opponents are using NEPA to block a project altogether. If there is no potential for flexibility, ADR may become, as one panelist put it, "an expensive way to achieve the same impasse."

DOE Experience

DOE has employed ADR techniques on several occasions with some success. Mediation was used to settle one of the foreign spent fuel cases in South Carolina. At the Paducah Site last year, the court directed that the parties attempt mediation (*Lessons Learned Quarterly Report*, June 1997, page 8). Recently, a facilitator was appointed to assist the parties reach a settlement in the waste management portion of the Stockpile Stewardship case (see "Litigation Updates," page 13).

On May 1, 1998, the President issued a memorandum, "Designation of Interagency Committees to Facilitate and Encourage Federal Agency Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking." The memorandum encourages "consensual resolution of disputes and issues in controversy involving the United States, including the prevention and avoidance of disputes."

ADR, then, does share some common ground with NEPA. Mediators can help parties create processes that obtain useful information to complete—not compete with—the NEPA process. For further information on ADR at DOE, contact Phyllis Hanfling, Director, Office of Dispute Resolution, Office of General Counsel (GC-12), at (202) 586-6972. 

Dispute Resolution Conference Planned

The 13th annual Federal Dispute Resolution conference will be held in Indian Wells, California, August 16 to 20. The conference website, which includes information on program and registration, is <http://www.fdr-conference.org>.

Reminder: Clean Air Act Conformity Requirements to be Met Through NEPA

Shortly after the Environmental Protection Agency issued its final rule concerning Clean Air Act conformity (effective January 31, 1994), the Office of Environment, Safety and Health determined that the Department would implement these regulations through the NEPA process (memorandum "Information—Final Clean Air Act Rule Requiring that Federal Actions Conform to Applicable State Implementation Plans" from Raymond Pelletier, Director, Office of Environmental Guidance, now Environmental Policy and Assistance, dated January 27, 1994). The conformity regulations (40 CFR Part 93) were also discussed in detail at the February 1994 NEPA Compliance Officers meeting in Augusta, Georgia.

The regulations prevent Federal agencies from providing financial assistance, licensing, permitting, or approving any activity in a "nonattainment" or "maintenance" area that does not conform to the State implementation plan. For DOE sites or DOE programs that fund or approve activities in nonattainment or maintenance areas, NEPA documents must contain a conformity determination or explain why the regulations do not apply to the proposed action. Please let us know your experience and any lessons you have learned regarding implementation of the conformity regulations. Contact Mary Greene at mary.greene@eh.doe.gov, phone (202) 586-9924, or fax at (202) 586-7031. 

Ecological Society of America Briefs Federal Agencies

The Ecological Society of America Headquarters Office, Washington, DC, held a briefing on its current activities for Federal agency representatives on May 13. Participants included staff from the Environmental Protection Agency and the Departments of Interior, Commerce, Agriculture, and Energy. This meeting was part of ongoing efforts by the Society to reach out to Federal agencies and improve the ways in which it provides ecological information to agency decision makers.

One accomplishment of the Society this year is expansion of its Internet services. The Society web site at <http://esa.sdsc.edu> provides access to, among other features, its outreach activities (newsletters, fact sheets, and issue papers, such as one on "Ecosystem Services: Benefits supplied to Human Societies by Natural Ecosystems"), electronic copies of its journal "Ecology," and links to many web sites of potential interest to environmental scientists.

The Society also continues a strong science program through its Sustainable Biosphere Initiative (SBI) Project Office, with the aim of assisting the scientific community in responding to Federal policy needs. Publications at the SBI location on the Society's web site include a 1996 "Conversation" on "NEPA and Ecosystem Management." SBI is currently involved in the preparation of a paper on managing land use that will be available in the Fall 1998, after peer review. SBI also is planning a workshop for Federal agencies on advances in understanding ecological responses to acid deposition since the

1990 National Acid Precipitation Assessment Program report was issued.

For further information contact Carolyn Osborne at carolyn.osborne@eh.doe.gov, phone (202) 586-4596, or fax (202) 586-7031. 

National Academy of Public Administration to Evaluate DOE NEPA Program

The Office of NEPA Policy and Assistance has asked the National Academy of Public Administration (NAPA) to evaluate the effects of DOE's NEPA reforms, initiated in mid-1994, on the timeliness, cost, and efficiency of DOE's NEPA reviews. NAPA will also evaluate the effects of DOE reforms on stakeholders' opportunities to participate effectively in DOE's decision-making process. NAPA's study will be completed this summer, after which the NEPA Office will make results available to the DOE NEPA community. Congress chartered NAPA to provide independent and expert advice on a broad range of policy and management issues to improve the quality of Federal operations.

Cumulative Effects Analysis Events

CEQ Planning Regional Workshops

The Council on Environmental Quality (CEQ) plans to conduct regional training workshops on cumulative effects analysis beginning in the Fall 1998. Workshops will be based on the CEQ Handbook, "Considering Cumulative Effects Under the National Environmental Policy Act," issued in January 1997.

CEQ recently solicited help with workshop content from Federal agency NEPA liaisons, and on May 18, staff from the Office of NEPA Policy and Assistance and the Office of General Counsel and four NEPA Compliance Officers (Defense Programs, Energy Research, Bonneville Power Administration, and Western Area Power Administration) participated in a pilot workshop with NEPA liaisons from other Federal agencies. Participants provided constructive critiques of draft presentation materials. Staff from the Office of NEPA Policy and Assistance will represent DOE in a smaller, multi-agency working group that will continue to advise CEQ regarding the workshops.

EPA Preparing Guidance for Its NEPA Reviewers

The Environmental Protection Agency's (EPA) Office of Federal Activities is preparing guidance on "Consideration of Cumulative Impacts in EPA Review of NEPA Documents," based on CEQ's Handbook. EPA intends that the guidance assist its NEPA reviewers in meeting EPA responsibilities under Section 309 of the Clean Air Act, to review and comment on EISs prepared by other Federal agencies.

In response to EPA's offer to other Federal agencies to comment on the draft guidance, the Office of NEPA Policy and Assistance coordinated a review of the draft guidance with NCOs and provided comments to EPA on May 14. DOE's comments asked that the guidance address differences in cumulative effects analysis between EAs and EISs, expressed strong concern about EPA's proposed use of a historical benchmark (e.g., pristine environment) as a baseline in comparative analysis of alternatives, and offered to work further with EPA—in particular, to include aspects of cumulative impact analysis that are frequently important in DOE NEPA reviews (e.g., cumulative impacts on human health) but were not addressed in EPA's draft guidance.

For more information, contact Carolyn Osborne, Office of NEPA Policy and Assistance, at carolyn.osborne@eh.doe.gov, phone (202) 586-4596, or fax (202) 586-7031. 

Training Opportunities

Environmental Scoping and Decision Analysis: Applying Modern Planning and Analysis Tools

National Association of Environmental Professionals
June 20 and June 24, 1998
San Diego, California
Fee: \$75
For information, see the "conference homepage" (<http://www.wco.com/~aecos/NAEP/confer6.html>) at NAEP's Internet site <http://www.naep.org>

An Environmental Professional's Introduction to the Voluntary Management Standards

National Association of Environmental Professionals
June 20, 1998
San Diego, California
Fee: \$75
For information, see the "conference homepage" (<http://www.wco.com/~aecos/NAEP/confer6.html>) at NAEP's Internet site <http://www.naep.org>

Environmental Impact Assessment

Dr. Larry Canter, University of Oklahoma
Dr. Samuel Atkinson, University of North Texas
Environmental Impact Training
July 29 to 31, 1998
Irving, Texas
Fee: \$595
For information, call (405) 321-2730

Advanced Topics in Environmental Impact Assessment

Dr. Larry Canter, University of Oklahoma
Dr. Samuel Atkinson, University of North Texas
Environmental Impact Training
August 3 to 5, 1998
Irving, Texas
Fee: \$595
For information, call (405) 321-2730

Environmental Laws and Regulations

DOE National Environmental Training Office
August 11 to 13, 1998
Savannah River Site
Fee: Free to Federal employees; \$220/day for contractors and others
For information, call (803) 725-0816, or see Internet site <http://www.em.doe.gov/neto/courses/env256.html>

DOE's NEPA Program Cited as Exemplary at Congressional Hearing

At a Congressional oversight hearing on problems and issues associated with NEPA, witnesses within and outside the Federal government referred to DOE's NEPA program as exemplary. The hearing was held March 18, 1998, by the House of Representatives' Committee on Resources, chaired by Congressman Don Young (Alaska).

The Council on Environmental Quality Chair, Kathleen McGinty, emphasized NEPA's importance in integrating economic, social, and environmental values. NEPA implementation has also helped agencies avoid mistakes, she said, recalling how former DOE Secretary James Watkins once remarked to Congress, "Thank God for NEPA." The NEPA process was key to his decision to defer selection of a costly tritium production technology.

Most of the witnesses from the public sector and from private interest groups testified that NEPA itself is not a problem—but NEPA implementation by certain agencies needs improvement. The Director of the Reason Public Policy Institute, Lynn Scarlett, however, singled out DOE as having successfully reinvented its NEPA compliance

program, particularly in setting, tracking, and reporting cost and time goals for the NEPA process. She noted that, for DOE, the common wisdom is certainly true that "what gets measured gets done."

Witnesses suggested that Federal implementation of NEPA needed to enhance opportunities for involvement by state and local governments. In this regard, Senate Bill 1176, introduced in September 1997, would amend NEPA to require Federal agencies to identify states and counties with jurisdiction by law or special expertise as cooperating agencies in the preparation of NEPA documents. Witnesses also urged multiple Federal agencies that might be involved in a proposed action to coordinate better, particularly in identifying requirements for projects, eliminating duplication of environmental analyses, and consolidating approvals.

For further information on the hearing or DOE's NEPA process, contact Carolyn Osborne, Office of NEPA Policy and Assistance, at carolyn.osborne@eh.doe.gov, phone (202) 586-4596, or fax (202) 586-7031. 

NEPA Guidance Updates

DOE NEPA Guidance

These guidance documents are under development. For information, please consult the following points of contact. For all, the fax number is (202) 586-7031.

Categorical Exclusion Procedures

Carolyn Osborne
(202) 586-4596
carolyn.osborne@eh.doe.gov

Better Graphics in NEPA Documents

Yardena Mansoor
(202) 586-9326
yardena.mansoor@eh.doe.gov

Accident Analysis Guidance

Ted Hinds
(202) 586-7855
warren.hinds@eh.doe.gov

Eric Cohen
(202) 586-7684
eric.cohen@eh.doe.gov

Update of the NEPA Compliance Guide (Reference Book)

Barbara Grimm-Crawford
(202) 586-3964
barbara.grimm-crawford@eh.doe.gov

Guidance from Other Agencies

Council on Environmental Quality (CEQ)
Environmental Justice: Guidance under the National Environmental Policy Act
(issued undated in March 1998)
Copies are available from
Brad Campbell
(202) 395-5750
bradley_m._campbell@oa.eop.gov



Litigation Updates

By: Stephen Simpson, Office of NEPA Policy and Assistance

DOE Wins Two Spent Nuclear Fuel Suits, Files Motion and Response in Stockpile Stewardship Litigation

DOE has won two NEPA lawsuits, one over selection of a western port for the receipt of foreign research reactor spent nuclear fuel, and the other over the management of spent nuclear fuel at the Idaho National Engineering and Environmental Laboratory. DOE has also recently filed its summary judgment motion and its response to the plaintiffs' summary judgment motion in the continuing litigation involving the Stockpile Stewardship and Management Programmatic EIS.

Choice of Port Upheld

On March 18, 1998, the U.S. District Court for the Northern District of California upheld the selection (in a May 1996 Record of Decision) of Concord Naval Weapons Station (NWS) as the western port of entry, based on the Department's February 1996 Final EIS on a Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (DOE/EIS-0218). The County of Contra Costa and the City of Concord, both in California, had sued DOE in October 1997, alleging that the selection of Concord NWS violated several Federal laws, including NEPA. (See *Lessons Learned Quarterly Report*, December 2, 1997, page 17.)

The plaintiffs alleged that the port selection violated NEPA because (1) the EIS did not adequately address the risk of terrorism or sabotage at Concord NWS; (2) new facts discovered after completion of the EIS required a Supplemental EIS; (3) the Navy's Environmental Assessment (EA) (tiered from the DOE EIS) of the site-specific impacts of use of Concord NWS as a port of entry was inadequate (for the same reasons that the EIS was inadequate); and (4) DOE impermissibly segmented issues (by preparation of a DOE programmatic EIS, a DOE Supplemental Analysis (SA) for a different transportation route, and a Navy site-specific EA).

The court ruled that DOE's decision not to quantify the probability that terrorism or sabotage would occur was reasonable given that the EIS discussed the security measures in place and described in detail the potential consequences of deliberate attack. The court also found that, because the plaintiffs had not identified significant impacts not already evaluated in the EIS and SA, neither the choice of Concord NWS nor the selection of a new route required preparation of a Supplemental EIS. The court found that any omission of terrorism or sabotage

issues in the EA did not violate NEPA because DOE had adequately addressed the same issues in the EIS. Finally, the court held that the separately prepared assessments (programmatic EIS, SA, and EA) did not constitute improper segmentation of the NEPA review. *Contra Costa County v. Peña*, No. C97-3842 FMS (N.D. Calif. March 18, 1998).

DOE Wins Suit on Idaho Spent Fuel EIS

On March 31, 1998, Judge Edward J. Lodge of the U.S. District Court for the District of Idaho granted DOE's motion for summary judgment, effectively ending the suit filed in August 1995 by the Snake River Alliance Education Fund challenging the adequacy of DOE's Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS (DOE/EIS-0203). The plaintiff alleged among other things that the EIS was deficient because DOE: (1) did not adequately "establish the underlying purpose and need for the proposed actions" or "justify" its choice of preferred alternative; (2) improperly segmented its analysis; (3) did not consider a reasonable range of alternatives; and (4) did not adequately analyze "environmental, human, and other impacts."

In its motion, DOE argued that the EIS clearly identified the purpose and need for agency action (and noted that neither NEPA nor the Council on Environmental Quality (CEQ) Regulations implementing NEPA require that the agency "justify" the proposed action or an alternative in the EIS). DOE also argued that the analysis was not improperly segmented; rather, DOE analyzed the impacts of actions that were ripe for decision and is deferring analysis of further actions to tiered NEPA review. DOE asserted that the range of alternatives was reasonable. (The EIS clearly linked the programmatic and site-wide alternatives, the site-specific no action alternative was appropriate for analysis of a continuing operation, and the EIS evaluated the alternative requested by the plaintiff during the public comment period.) Finally, DOE contended that the analysis of radiological impacts was based on the best scientific knowledge available and its use of a conservative analysis of accident impacts was reasonable.

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DOE Cases (continued from page 13)

As of this writing, Judge Lodge has not yet issued an opinion giving his reasons for ruling in favor of DOE nor an order formally dismissing the case.

Motion for Summary Judgment Filed in Stockpile Stewardship Case

Matters are proceeding in the litigation brought by the Natural Resources Defense Council (NRDC) and 38 other nongovernmental organizations concerning a 1990 stipulation and order in which DOE indicated that it would initiate preparation of two programmatic EISs—one for the reconfiguration of the nuclear weapons complex and one for waste management and environmental restoration. (See related articles in *Lessons Learned Quarterly Report*, June 1997, page 5 and September 1997, page 3.)

In January 1998, the plaintiffs amended their complaint concerning the weapons complex, narrowing the outstanding issues to new information regarding the National Ignition Facility and to production of plutonium pits at the Los Alamos National Laboratory. This complaint now challenges the adequacy of DOE's Stockpile Stewardship and Management Programmatic EIS (SSM PEIS) and asks that the court require DOE to prepare a supplemental programmatic EIS. (See related article in *Lessons Learned Quarterly Report*, March 1998,

page 13.) On April 6, the plaintiffs filed a motion for summary judgment on the issues raised by the amended complaint.

On May 18, the Department of Justice filed on DOE's behalf a motion for summary judgment. The brief supporting DOE's motion argues that DOE does not need to prepare a supplemental programmatic EIS because the information pointed to by the plaintiffs is not new and was adequately addressed in the SSM PEIS, does not significantly change the analysis and conclusions of the SSM PEIS, raises issues being addressed by tiered NEPA documents (in particular, the Los Alamos National Laboratory Site-wide EIS), or addresses possible actions for which DOE has not yet formulated a proposal. A hearing on the summary judgment motions is scheduled for June 22, 1998.

In the waste management portion of the case, both parties have agreed to the appointment by the court of a Special Master to assist the parties in reaching a settlement. In addition, the parties are proceeding with the discovery phase of the process preliminary to a trial on NRDC's request to hold DOE in contempt of the 1990 Stipulation and Order for failure to prepare a programmatic EIS that addresses environmental restoration. That trial is scheduled for October 15, 1998. 

Other Cases of Interest

Forest Service Ordered to Prepare EIS for One Action, Support Mitigation Measure for Another

The U.S. District Court for the Western District of Pennsylvania recently ordered the Forest Service to prepare an EIS for a proposed timber sale, the "Mortality II Project," from the Allegheny National Forest. The Service had prepared an EA for the sale that examined only two alternatives, the proposed action (which involved an extensive use of "even-aged" management techniques, including clearcutting) and no action. The plaintiffs challenged the Service's Finding of No Significant Impact (FONSI), alleging that the use of even-aged management techniques on 4,775 acres (out of the 5,000 acres for sale) would have the potential for significant impacts, including impacts on wildlife and old-growth forests.

The court agreed with the plaintiffs that the magnitude of the proposed action and the selection of even-aged management as the predominant management technique undermined the FONSI. (The court also noted that the length of the 49-page EA, with 349 pages of appendices, tended to undermine the FONSI, citing the admonition of

the Council on Environmental Quality (CEQ) in the answer to Question 36b of *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* that "in most cases, . . . a lengthy EA indicates that an EIS is needed." 46 Fed. Reg. 18026, 18037 (1981)) The court further held that several of the potential impacts of the proposed action corresponded to the "intensity" factors in the definition of "significantly" in the CEQ NEPA Regulations (40 CFR 1508.27). Specifically, the location of the proposed action contained exceptionally high quality streams and endangered species habitat; it was also adjacent to an old-growth forest.

Finally, the court agreed with the plaintiffs' challenge to the Service's range of alternatives. Although the Long-Range Management Plan for the Allegheny National Forest stated that even-aged management techniques would be the "featured" system for this area, the court held that the Service still had an obligation to consider a "broad range of reasonable alternatives," some of which would involve more extensive use of uneven-aged management techniques. *Curry v. U.S. Forest Service*, 1997 U.S. Dist. LEXIS 20134 (W.D. Pa. 1997).

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What Worked and Didn't Work in the NEPA Process

To foster continuing improvement of the Department's NEPA Compliance Program, DOE Order 451.1A requires the Office of Environment, Safety and Health to solicit comments on lessons learned in the process of completing NEPA documents and to distribute quarterly reports. This Quarterly Report covers documents completed between January 1 and March 31, 1998. Comments and lessons learned on the following topics were submitted by questionnaire respondents.

Some of the material presented reflects the personal views of individual questionnaire respondents, which (appropriately) may be inconsistent. Unless indicated otherwise, views reported herein should not be interpreted as recommendations from the Office of Environment, Safety and Health.

Scoping

What Worked

- A strategic determination. A project team meeting proved effective in determining the level of NEPA review required for this project: an EA to supplement the EIS.
- Internal scoping to share information. An internal scoping meeting was used to get project people up to speed on issues and to point out another option in sizing the project.
- Effective integration with the state process. We used the state's EA-type process and EA worksheet to analyze potential environmental impacts of the state's portion of the project, incorporating the worksheet into the EA as an attachment. The state's formal process for public noticing, review, and comment was unique for this facility, but it worked well.

Data Collection/Analysis

What Worked

- Resource specialists. We used specialists from the cooperating agency to prepare resource reports.
- Early identification of data needs. A list of data needs was provided to the project people early.
- Sensitivity analysis. We used this to show that project impacts were far below the levels of concern.

What Didn't Work

- Off-season field studies. Better planning would have accomplished the necessary wetlands delineation during the growing season of 1996, instead of having to wait for the growing season of 1997.

Schedule

Factors that Facilitated Timely Completion of Documents

- Frequent communication. We maintained active cooperation between project sponsors and NEPA staff.
- Electronic review. We made "real time revisions" during the review process.
- Timely review. To expedite the process, reviewers commented on the first several chapters (1 through 4) before completion of the entire draft EA.
- Effective management. Managers maintained constant vigilance over the schedule and deliverables.

Factors that Inhibited Timely Completion of Documents

- Uninformed Management. The DOE Field Office Manager had not been made aware of the project, which delayed EA approval by two weeks.
- Inadequate experience. Project proponents may not have had sufficient knowledge of NEPA requirements.
- Incomplete design information. The delay in document completion was largely due to issues related to the project conceptual design and characterization of the proposed construction site (e.g., borehole data and the location of the proposed building footprint to identify potentially impacted wetland areas).
- Mitigation design. Developing mitigation measures for potential impacts (e.g., design of the shielding for the proposed experiment) took longer than initially anticipated.
- Review schedules. State reviews should not have been scheduled over the holidays.

Factors that Facilitated Effective Teamwork

- Familiarity. Good cooperation among team members, who had worked together previously.
- Effective review. DOE reviewed early draft portions of documents and offered helpful input. This process was aided by the use of e-mail and conference calls. The result was prompt resolution of key issues.
- NCO and GC assistance. Significant, thoughtful comments from the NEPA Compliance Officer and the legal staff on the draft EA helped to improve the document.

Second Quarter FY 1998 Questionnaire Results

Process

Successful Aspects of the Public Participation Process

- Complete information. *Informing the public of all activities, including the EA process.*
- Early contacts. *Extensive mailings and personal contacts with stakeholders early in the process, including continual contact and information exchange with the involved Tribes.*
- Public information. *A public information meeting helped get the message out on the positive aspects of the project.*
- Proactive involvement of stakeholders. *We provided EAs for pre-approval review to three states and arranged visits with representatives of two state agencies, where we presented the EA and discussed the proposed project. Information about the proposed project was sent to local mayors, and we offered briefings to them as well (none were requested).*
- Full disclosure. *Open and honest meetings with local housing associations, mayors, and school groups.*

Unsuccessful Aspects of the Public Participation Process

- Overly broad publicity for EA-level issues. *The aggressive efforts to publicize the project, involve stakeholders, and notify news organizations as far away as Washington, DC, seemed excessive.*

Usefulness

Agency Planning and Decision Making—What Worked

- Project improvements. *Changes were made to improve the project design as a result of the NEPA process.*
- Siting. *The NEPA process helped DOE to identify the best location for conducting the research.*
- Process provided focus. *The process allowed DOE to focus clearly on the issues of potential concern. DOE and the community ensured that these issues could be effectively mitigated.*
- Facilitated good planning. *The process substantiated that good planning actually does result from the NEPA process.*

- Promoted informed decision making. *The need for the project was very clear to the biologists, but convincing decision-makers and stakeholders of the impacts from not acting soon was a challenge.*

Agency Planning and Decision Making—What Didn't Work

- Decision already made. *A management decision to implement this project had effectively already been made before the EA was completed.*

Enhancement/Protection of the Environment

- No adverse impact. *The NEPA process ensured that there would be no adverse impact to the environment.*
- Mitigation was identified to minimize impacts.
- Key issues addressed. *The EA facilitated the identification and mitigation of key environmental concerns, such as the potential for ground water activation.*

Effectiveness of the NEPA Process

For the purposes of this section, “effective” means that the NEPA process was rated 3, 4, or 5 on a scale from 0 to 5, with 0 meaning “not effective at all” and 5 meaning “highly effective” with respect to its influence on decision making.

- For this quarter, in which all documents were EAs, 6 of the 12 respondents rated the NEPA process as “effective.”
- The two respondents rating the process as “highly effective” indicated that it provided valuable documentation and assisted in protecting the environment by analyzing potential impacts in advance of project implementation.
- One respondent (who rated the process as “4”) stated that it allowed the site to focus on the key issues of concern.
- All three respondents who rated the process as “not effective at all” explained that the decision appeared to have been already made prior to the NEPA review. 

Second Quarter FY 1998 Questionnaire Results

EIS-related Documents Issued Between Jan. 1 and Mar. 31, 1998

Notices of Intent	DOE/EIS#	Date
• Production of Tritium in a Commercial Light Water Reactor	DOE/EIS-0288	1/21/98 (63 FR 3097)
• Sutter Power Plant and Transmission Line Project, California	DOE/EIS-0294	2/13/98 (63 FR 7412)
• South Oregon Coast Reinforcement Project, Coos Bay/North Bend, Oregon	DOE/EIS-0296	3/31/98 (63 FR 15391)
Records of Decision		
• Waste Isolation Pilot Plant (WIPP) Disposal Phase Supplemental (SEIS II), Carlsbad, NM	DOE/EIS-0026-S2	1/23/98 (63 FR 3623)
• Treatment and Storage of Transuranic Waste (Waste Management Programmatic)	DOE/EIS-0200	1/23/98 (63 FR 3629)
• Disposal of the Defueled S3G and D1G Prototype Reactor Plants, Richland, WA (Navy document)	DOE/EIS-0274	1/28/98 (63 FR 4235)
• Shutdown of the River Water System at the Savannah River Site	DOE/EIS-0268	1/28/98 (63 FR 4236)
Supplement Analyses		
• Supplement Analysis for the Concord Naval Weapons Station as the West Coast Port of Entry for Shipments of Foreign Research Reactor Spent Nuclear Fuel from Asian and Pacific Rim Countries (No further NEPA review required)	DOE/EIS-0218-SA-01	1/98
• Supplement Analysis for Proposed Silos 1 and 2 Accelerated Waste Retrieval Project at Fernald (No further NEPA review required)	DOE/EIS-0195-SA-03	3/98
• Supplement Analysis for the Use of Hazardous Materials in National Ignition Facility Experiments at Lawrence Livermore National Laboratory (No further NEPA review required)	DOE/EIS-0236-SA-03	3/98
• Supplement Analysis for the Enhancement of Pit Manufacturing at Los Alamos National Laboratory (No further NEPA review required)	DOE/EIS-0236-SA-04	3/98

Recent EIS Milestones

Notices of Intent

Conveyance and Transfer of Certain Land Tracts
Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM (DOE/EIS-0293)
(63 FR 25022, May 6, 1998)

Griffith Power Plant and Transmission Line Project, Mohave County, AZ (DOE/EIS-0297) (63 FR 16496, May 3, 1998)

Draft EISs

Los Alamos National Laboratory, Los Alamos, NM
Site-wide (DOE/EIS-0238) (April 1998)

Construction and Operation of a Tritium Extraction Facility at Savannah River Site (DOE/EIS-0271) (April 1998)

Supplement Analysis

Tank Waste Remediation System, Richland, WA,
(DOE/EIS 0189-SA2) (May 1998)
(No further NEPA review required)

Second Quarter FY 1998 Questionnaire Results

EA Cost and Completion Time Data

(No EISs were completed in this quarter.)

Bonneville Power Administration

Upper Snake River Fish Culture Facility

DOE/EA-1213

Cost: \$28,200

Time: 13 months

Grizzly Substation Fiber Optic Project at Crooked River National Grasslands, Jefferson County, OR

DOE/EA-1241

Cost: \$10,100

Time: 4 months

Chicago Operations Office/Energy Research

Management of Whitetail Deer Causing Damage at Fermi National Accelerator Laboratory

DOE/EA-1228

Cost: \$11,200

Time: 5 months

Proposed Neutrino Beams for the Main Injector at Fermi National Accelerator Laboratory

DOE/EA-1198

Cost: \$128,500

Time: 18 months

Idaho Operations Office/Environmental Management

SIC Mining Plan of Operation

(DOE adopted Bureau of Land Management EA)

DOE/EA-1248

Cost: (Does not apply)

Time: (Does not apply)

(Missing from the last issue of *Lessons Learned*)

Naval Petroleum and Oil Shale Reserves in Colorado, Utah, Wyoming/Fossil Energy

Site-wide EA for Transfer of Ownership of Naval Petroleum Reserve No. 3, Colorado, Utah and Wyoming

DOE/EA-1236

Cost: \$10,000

Time: 5 months

Savannah River Site/Environmental Management

Construction, Operation, and Decontamination and Decommissioning of the Waste Segregation Facility at SRS

DOE/EA-1229

Cost: \$18,500

Time: 1 month

Tritium Facility Modernization and Consolidation Project at SRS

DOE/EA-1222

Cost: \$27,600

Time: 27 months

Other Cases of Interest

(continued from page 14)

In another action, the U.S. Court of Appeals for the Second Circuit recently struck down a Forest Service FONSI that depended on a mitigation measure unsupported by either substantial evidence of its effectiveness or a sufficient monitoring plan. As part of a proposed logging project in Vermont, the Service proposed to extend a logging road into critical habitat for the black bear. The Service conceded in the EA that the unauthorized use of the road by all-terrain vehicles would be a problem and that the amount of such use was unknown, but would be likely to increase as a result of the proposed action. In addition to temporal restrictions on the construction and use of the extension, the Service proposed to mitigate for adverse impacts to the bears by constructing a berm at the current end of the road to give drivers of all-terrain vehicles the impression that the road had not been extended.

The court ruled that, in issuing a FONSI based in part on the proposed berm, the Service had not taken a "hard look" at the impacts of the proposed road. The court noted that mitigation measures have been found to be sufficiently supported (so that the agency can rely on them to issue a FONSI) when they were based on studies conducted by the agency or when the agency had an adequate monitoring mechanism in place. The Service did not, however, conduct a study of the effects of the proposed mitigation measure, propose any monitoring of the berm's efficacy, or consider any alternatives in case the berm failed. In the absence of substantial evidence to support the efficacy of the mitigation measure, the court found that the Service did not adequately consider the significance of the impact of the proposed action on the environment and ordered the Service to reexamine the propriety of issuing a FONSI. *National Audubon Society v. Hoffman*, 1997 U.S. App. LEXIS 36184 (2d Cir. 1997). 